

2011 AFSCME MEF/CEO – CITY OF SAN JOSE NEGOTIATIONS

AFSCME COUNTER PROPOSAL – SAFETY

Rationale:

This counter proposal is in response to the City proposal to strike Safety provisions from the contract. The union is at the bargaining table to work with the City. This proposal underscores, as will all of our proposals that we are stepping up to ensure that the City of San Jose continues to be a great place to work. It is critical that the City not incur unnecessary costs and that it continues to work efficiently and effectively. Safety is critical in the workplace and this proposed contract language could address many potentially unsafe working conditions that could be resolved prior to asking for an official City determination or reporting a possible violation(s) to a state or federal agency. It's important that contract language exists to ensure that preliminary steps are expected and taken to resolve an issue before it escalates to either an employee being hurt or disciplined or the City receiving a notice of violation or administrative penalty. The City stated that no procedure exists and this language can stand until such time as a policy or procedure is adopted.

Proposed MEF language:

ARTICLE 15 SAFETY

- 15.1 The City shall provide a safe and healthy working environment in accordance with applicable State and Federal laws and regulations. The Union agrees that where safety devices or protective equipment is required or furnished, its use shall be mandatory.
- 15.2 An employee who believes their work assignment is unsafe or believes a safety violation exists and for that reason refuses to perform such assignment, will first report such unsafe conditions to their supervisor and try and resolve it at that level. The employee may at any time request that a union representative assist or be present for any part of the process. ~~shall be assigned other duties, if other duties are available, and no other employee shall be assigned the work assignment in dispute until after a determination has been made by the City's Safety Officer. If no other duties are available, the employee shall be placed on a leave of absence without pay, pending the above determination. Prior to being placed on such leave, however, the employee may request the presence of the appropriate Union representative.~~
- 15.3 In cases of dispute over safe working conditions, the employee may request that the City make a determination as to the safety of the work assignment and/or workplace. If the City is asked to make a determination, an employee will be assigned other duties if other duties are available while an investigation is underway, or assigned to another work location if available. No other employee shall be assigned the work assignment in dispute until after a determination is made and documented in writing by the City's designated safety official or the appropriate state or federal agency. ~~The employee's immediate supervisor shall immediately request the City's Safety Officer to make a determination as to the safeness of the work assignment in question. If the assignment is determined to be unsafe, the employee shall be reimbursed for any time lost due to the refusal to perform. If the employee disagrees with the determination of the City's Safety Officer and continues to refuse to perform the assignment, the employee shall be assigned other duties, if such other duties are available, and a prompt request for a determination by the Department of Industrial Safety of the State of California shall be made. Pending such determination, the assignment shall not be given to another employee. If no other duties are available, the employee shall be placed on a leave of absence without pay, pending the determination of the Department of Industrial Safety. If the assignment is determined to be unsafe, the employee shall be reimbursed for any time lost due to refusal to perform. The~~

2011 AFSCME MEF/CEO – CITY OF SAN JOSE NEGOTIATIONS

determination by the Department of Industrial Safety of the safeness or unsafeness of the work assignment shall not be subject to the grievance procedure.

- 15.4 If the working condition in dispute cannot be resolved and the employee is subject to disciplinary action the grievance procedure will be utilized. Safety grievances shall be submitted at Step III. Upon request of either the employee or the representative of the State of California, Division of Occupational Safety and Health, the appropriate Union representative shall be permitted to accompany the City Safety Officer, or the representative of the Division of Industrial Safety, or both, during the inspections of the questioned work assignment. Neither the employee nor the appropriate Union representative shall suffer any loss of compensation for time involved in the inspections of the questioned work assignment during their respective regularly scheduled working hours. In no event shall overtime or premium pay be paid for any time spent in such inspections.
- 15.5 ~~The city-wide Safety Committee shall provide one seat for an MEF designated representative. The MEF representative shall attend regular meetings for the purposes of informing the committee of safety issues and concerns and assisting in the development of educational training sessions.~~

Proposed CEO language:

ARTICLE 11 SAFETY

- 11.1 The City shall provide a safe and healthy working environment in accordance with applicable State and Federal laws and regulations. The Employee Organization agrees that where safety devices or protective equipment is required or furnished, its use shall be mandatory.
- 11.2 An employee who believes his/her work assignment is unsafe or believes a violation exists and for that reason refuses to perform such assignment, will first report such unsafe conditions to their supervisor and try and resolve it at that level. The employee may at any time request that a union representative assist or be present for any part of the process, shall be assigned other duties, if other duties are available, and no other employee shall be assigned the work assignment in dispute until after a determination has been made by the City's Safety Officer. If no other duties are available, the employee shall be placed on a leave of absence without pay, pending the above determination. Prior to being placed on such leave, however, the employee may request the presence of the appropriate Employee Organization representative.
- 11.3 In cases of dispute over safe working conditions, the employee may request that the City make a determination as to the safety of the work assignment and/or workplace. If the City is asked to make a determination, an employee will be assigned other duties if other duties are available while an investigation is underway, or assigned to another work location if available. No other employee shall be assigned the work assignment in dispute until after a determination is made and documented in writing by the City's designated safety official or the appropriate state or federal agency. The employee's immediate supervisor shall immediately request the City's Safety Officer to make a determination as to the safety of the work assignment in question. If the assignment is determined to be unsafe, the employee shall be reimbursed for any time lost due to the refusal to perform. If the employee disagrees with the determination of the City's Safety Officer and continues to refuse to perform the assignment, he/she shall be assigned other duties, if such other duties are available, and a prompt request for a determination by the Department of

2011 AFSCME MEF/CEO – CITY OF SAN JOSE NEGOTIATIONS

~~Industrial Safety of the State of California shall be made. Pending such determination, the assignment shall not be given to another employee. If no other duties are available, the employee shall be placed on a leave of absence without pay, pending the determination of the Department of Industrial Safety. If the assignment is determined to be unsafe, the employee shall be reimbursed for any time lost due to refusal to perform. The determination by the Department of Industrial Safety of the safety or lack of safety of the work assignment shall not be subject to the grievance procedure.~~

- 11.4 ~~If the working condition in dispute cannot be resolved and the employee is subject to disciplinary action the grievance procedure will be utilized. Safety grievances shall be submitted at Step III. Upon request of either the employee or the representative of the Department of Industrial Safety, the appropriate Employee Organization representative shall be permitted to accompany the City Safety Officer, or the representative of the Division of Industrial Safety, or both, during the inspections of the questioned work assignment. Neither the employee or the appropriate Employee Organization representative shall suffer any loss of compensation for time involved in the inspections of the questioned work assignment during their respective regularly scheduled working hours. In no event shall overtime or premium pay be paid for any time spent in such inspections.~~
- 11.5 ~~As used herein, the term "City Safety Officer" shall include any person designated to act as such.~~